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Monday, July 1, 2002

VINCENT M. DEDOMINICO,

No. 01-10563

[Debtor](#)  (s).

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LAURA GOMEZ EASTWOOD,

[Plaintiff](#)  (s),

v.


A.P. No. 01-1077

VINCENT M. DEDOMENICO,

[Defendant](#)  (s).

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Memorandum on Motion for Reconsideration and Countermotions

The complaint in this matter alleged that the debtor Vincent DeDomenico's obligations under a marital dissolution decree were nondischargeable pursuant to § 523(a)(15) of the [Bankruptcy Code](#) . After trial, the court found that the obligations were dischargeable under that section. However, the court noted evidence establishing that a portion of the decree was for disguised past due support. Seeking to do justice and assuming, as is far too often the case, that the parties had simply missed the issue, the court found that \$170,000.00 was nondischargeable under § 523(a)(5).

DeDomenico has moved the court for reconsideration of its decision. He points out that during discovery prior to trial he had specifically asked for and received a formal admission

that the decree of the state court did not include any sums due "which are of the kind described in 11 U.S.C. § 523(a)(5)." In response, plaintiff Laura Eastwood has made a counter-motion for leave to withdraw her admission and amend her complaint.

The law applicable to withdrawal of an admission has been clearly set forth in *Sonoda v. Cabrera*, 255 F.3d 1035, 1039 (9th Cir. 2001):

[T]wo requirements must be met before an admission may be withdrawn: (1) presentation of the merits of the action must be subserved, and (2) the party who obtained the admission must not be prejudiced by the withdrawal. The party who obtained the admission has the burden of proving that allowing withdrawal of the admission would prejudice its case. *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir.1995). The prejudice contemplated by 36(b) is not simply that the party who obtained the admission will now have to convince the factfinder of the truth; rather, it relates to the difficulty a party may face in proving its case, for example by the unavailability of key witnesses in light of the delay.

DeDomenico has not established the sort of prejudice necessary to bar Eastwood from withdrawing her admission. The only prejudice he has established is the expense of further discovery and trial, which the court believes he has overstated. If the debt in question is in fact unpaid support, it ought to be nondischargeable and the matter should be decided on the merits.

While the court has decided to conditionally grant Eastwood's counter-motions, she must bear at least part of the cost of her improvident admission. Moreover, it would be unfair to DeDomenico, in light of the admission, to adjudicate the matter without affording him a further trial on the issue. Accordingly, the court will order as follows:

1. Eastwood shall have until July 15, 2002, to pay to DeDomenico's counsel the sum of \$3,500.00. If she pays this sum by that date, her motion to withdraw her admission and amend her complaint will be granted and a new trial will be held solely on the issue of nondischargeability of the \$170,000.00 pursuant to § 523(a)(5) of the Bankruptcy Code. Immediately after said payment counsel for Eastwood shall notice a scheduling conference.
2. Eastwood shall bear all costs (including reasonable travel costs but not including attorneys' fees) associated with the re-deposition of any party whom DeDomenico deposed after receiving the withdrawn admission.
3. If Eastwood fails to make the payment described in paragraph 1 above by the time specified, then DeDomenico's motion for reconsideration will be deemed granted and Eastwood shall recover nothing on her complaint which will be dismissed, with prejudice, and DeDomenico shall recover his costs of suit.

Counsel for Eastwood shall submit an appropriate form of order conditionally granting her counter-motions and incorporating all of the above provisions.

Dated: July 1, 2002

Alan Jaroslovsky

U. S. [Bankruptcy Judge](#) 

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